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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 351

R. V. ARCHAWSKI, ET AL.,

Petitioners,

v.

BASIL HANIOTI, ETC.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONERS' BRIEF

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Opinions Below

The opinion of the United States District Court for the Southern District of New York (T. 5-11; R. 317-324; Walsh, D.J.) is reported in 129 Fed. Supp. 410.

The opinion of the United States Court of Appeals for the Second Circuit (T. 1-3; Frank, Medina and Hincks, C.J.J., opinion by Medina, C.J.) is reported in 233 F. 2nd 406.

R. refers to the pages of the certified original record of the proceedings below on file in this Court.

T. refers to the pages of the printed Transcript of Record on file in this Court.

Jurisdiction

The decision and judgment of the United States Court of Appeals for the Second Circuit was entered on June 3, 1955.

Petition for the grant of a writ of certiorari was filed on August 26, 1955.

Writ of certiorari was granted on October 24, 1955.

Jurisdiction of this Court is found in Title 28, U. S. Code, Secs. 1254(1), 2101(c) and 2106.

Constitutional Provision and Statutes Involved

"U. S. Const., Art. III, Sec. 2—The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and citizens of another State;—between citizens of different States;—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

"28 U. S. C. A. 2111. On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."

"28 U. S. C. A. Supreme Court Admiralty Rule 2. In suits in personam the process shall be by a simple monition in the nature of a summons to appear and answer the suit, or by simple warrant of arrest of the person of the respondent in the nature of a

capias, as the libelant may, in his libel or information pray for or elect; in either case with a clause therein to attach his goods and chattels, or credits and effects in the hands of the garnishees named in the libel to the amount sued for, if said respondent shall not be found within the district. But no warrant of arrest of the person of the respondent shall issue unless by special order of the court, on proof of the propriety thereof by affidavit or otherwise."

"28 U. S. C. A. *Supreme Court Admiralty Rule 22.* All libels in instant causes, civil and maritime, shall be on oath or solemn affirmation and shall state the nature of the case, as, for example, that it is a cause civil and maritime, of contract, or a tort or damage, or of salvage, or of possession, or otherwise, as the same may be; and, if the libel be in rem that the property is within the district; and, if in personam, the names and places of residence of the parties so far known. The libel shall also propound and allege in distinct articles the various allegations of fact upon which the libelant relies in support of his suit so, that the respondent or claimant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer for due process to enforce his rights in rem, or in personam, as the case may be, and for such relief and redress as the court is competent to give in the premises."

"28 U. S. C. A. 2107. Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed within thirty days after entry of such judgment, order or decree.

In such action, suit or proceeding in which the United States or any officer or agency thereof is a party, the time as to all parties shall be sixty days from such entry.

In any action, suit or proceeding in admiralty, the notice of appeal shall be filed within ninety days after the entry of the order, judgment or decree appealed from, if it is a final decision, and within fifteen days after its entry if it is an interlocutory decree.

Statement of the Case

On September 16, 1952, in the United States District Court for the Southern District of New York, a libel (T. 14-18; R. 245-250) in personam was filed in the individual behalves of some 350 cold libelants against the respondent Basil Hanioti, individually, and doing business under various pseudonyms, seeking damages measured by the amounts of the respective passage moneys which each had paid for prospective voyages on the respondent's vessel, "City of Athens," which voyages were never performed, nor substitute transportation provided, nor the passage moneys refunded, though duly demanded.

For the purpose of obtaining an order of body attachment upon the grounds of fraud, absence from the jurisdiction, and concealment, the essential allegations respecting the breaches of the maritime contracts of transportation were supplemented by factual allegations showing that at all of the times that the respondent was advertising and holding out the "City of Athens" to the public as a common carrier of passengers for hire, he and his alter egos were, unbeknownst to the libelants, hopelessly insolvent and that on July 24, 1947, he abandoned the vessel and projected voyages and fled the United States to Europe; that he had converted the unearned passage monies and had secreted himself away, and so manipulated his assets as to make himself judgment proof under normal procedures for the purpose of defrauding the libelants and was, at the time of filing the libel, shielding himself behind another dummy corporation which was his alter ego.

Process was prayed with the further request that if Hanioti could not be found that goods and chattels to the credit of his alter ego, "Basile Shipping Company, Inc.," and particularly the vessel known as the "Athens" then in New York, be attached. The "Athens" was thereupon attached by the U. S. Marshal and Hanioti appeared by

counsel and, under oath, answered the libel generally denying the allegations (R. 285-288). Thereafter a series of defaults on his part ensued, to the extent of wilfully disregarding peremptory orders from the Bench and a refusal on his part to co-operate with his proctors of record (T. 5).

Some two years later, November 23, 1954, the action duly came to trial and Hanioti defaulted in personally appearing but was represented by his proctors of record (T. 5). Libelants put in their proofs consisting, inter alia, of Hanioti's sworn testimony (Lib. Ex. 2; R. 193, 194) and his general passenger agent's sworn testimony (Lib. Ex. 1; R. 193, 194) taken before the United States District Court for Baltimore, Maryland, in another action wherein a statutory lienor had libeled the "CITY OF ATHENS" In Rem and in which the petitioners had intervened in a vain effort, and hopes, that they would be granted a maritime lien against the vessel for their respective fares.

In addition, to support the only effective means of execution that would be necessary in the action, proofs of Hanioti's fraudulent acts such as transfers of property, concealment, the dummy corporate set-ups, and his absconding were made. The Court (Walsh, D.J.) directed a decree for the libelants which (T. 12-13) was formalized and entered on December 6, 1954 and in which the District Court found the allegations of the libel to be amply supported upon the record.

With respect to execution of its decree by body attachment of Hanioti, unless he satisfied the same, the District Court found (T. 7-11) that the subordinate allegations in the libel, respecting Hanioti's fraudulent acts, dummy corporations, absconding, etc. were amply supported upon the record which it diligently points out in its opinion findings (T. 5-11).

The very next day following entry of the final decree, December 7, 1954, still in concealment and by new counsel, Hanioti moved to vacate the final decree and the [illegible]

therein providing for body execution (T. 5; R. 299-315a). After extensive hearings, in which Hanioti's personal appearance in Court was directed by the Court (R. 338) and during which he deliberately perjured himself (R. 316), the Court denied the motions under date of February 9, 1955 (T. 5).

Hanioti, still in concealment and frustrating the U. S. Marshal in the execution of the process of the District Court, noticed his appeal (T. 4) from the final decree on March 24, 1955—108 days after entry of the final decree, without any extension of time within which to appeal having been granted to him and without having posted any supersedeas or security.

Despite petitioners' timely motion to dismiss the respondent's appeal (R. LXV-LXXII) and the knowledge that he had deliberately removed himself from the jurisdiction, the Court of Appeals reviewed upon the respondent's appeal reversing the District Court, on the law, and remanding the cause back to the District Court for dismissal upon the ground that admiralty lacked jurisdiction of the subject matter (233 F. 2d 406; T. 1-3), whereupon the District Court dismissed the action as ordered.

As the basis for its reversal, the Court of Appeals held that the petitioners' actions were in the nature of the old common law *indebitatus assumpsit*, for "money had and received" citing as authority for this construction and its action its *Silva v. Bankers Comm'l Corp.*, 163 F. 2nd 602 and *United Transportation & L. Co. v. N.Y. & Balt. T. Lines*, 185 Fed. 386, cases.

The facts, as found by the District Court, come to this Court undisturbed by the Court of Appeals.

With approval of this Court, as contained in its order of December 12, 1955, petitioners have designated, as those parts of the record deemed necessary for this Court's consideration of the questions presented, those portions of the

certified original record filed herein previously printed, separately bound, and now on file in this Court as "Transcript of Record."

ARGUMENT

QUESTION NO. 1

The United States District Courts, sitting in admiralty, have jurisdiction of actions seeking the recovery of passage monies prepaid as consideration under maritime contracts of carriage which are breached by nonperformance and where no substitute transportation is provided.

The founding fathers, all experienced in the law as administered during colonial days and the strife between the common-law and admiralty courts of England, who drafted the Constitution of this nation as a monument and pillar of government of free men, by free men, provided therein that the judicial power of the Federal courts,

> " " " shall extend to all Cases of admiralty and maritime jurisdiction; " " " (Art. III, Sec. 2, U. S. Const.).

Because of attacks upon this grant of judicial power seeking to limit and circumscribe it in accord with the absurd provisions of the English law, shortly after the adoption of the Constitution the Congress, in 1789, by *1 Stat. 73, Sec. 9*, rendered a legislative interpretation of the scope of the admiralty and maritime jurisdiction contemplated by the drafters. This statutory interpretation soon won the approval of the Federal Circuit courts and, in 1809, the noted decision of Mr. Justice Washington, in *Davis v. Brig Sapphire*, 21 Fed. Cas. 12,070 was handed down wherein he defined the scope of the admiralty and maritime jurisdiction as not to be determined by the absurdities of the Eng-

lish law as it existed at the time of the adoption of the Constitution, but was to be determined by the principles of maritime law:

> "as respected by maritime courts of all nations and adopted by most, if not by all, of them on the continent of Europe."

Although a number of this Court's decisions had earlier sustained the broader admiralty and maritime jurisdiction on specific issues, it was not until 1848 that this Court ruled squarely on the subject by declaring that,

> "* * * whatever may have been the doubt, originally, as to the true construction of the grant, whether it had reference to the jurisdiction in England, or to the more enlarged one that existed in other maritime countries, the question has become settled by legislative and judicial interpretation, which ought not now to be disturbed."

New Jersey Steam Nav. Co. v. Merchants' Bank, 6 How. 344, 380.

The *New Jersey Steam Nav. Co.* case also appears to be the landmark case respecting admiralty's jurisdiction over actions arising from maritime contracts of affreightment and wherein, speaking of admiralty's cognizance, this Court ruled that the jurisdiction must, in its nature, be complete,

> "for it cannot be confined to one of the remedies on the contract, when the contract is within its cognizance." 6 How. 344, 391.

In 1866, this Court stated that there was no distinction in principle between contracts for the carriage of merchandise by sea and contracts for the carriage of passengers by sea, because the passage money, in one case, is equivalent to the freight money, in the other, and a breach of either contract is an appropriate subject of admiralty jurisdiction. *The Moses Taylor*, 71 U. S. 411; 18 L. Ed. 397.

In the case at bar, we know that the contracts were maritime contracts which were breached by non-performance; that no substitute transportation was provided petitioners and that, though demanded, their respective fares prepaid as consideration for the promised transportation by sea, were not refunded.

This brings us down to the remedies or relief available to the petitioners for the breach and, since the contracts are within the cognizance of admiralty, whether such remedies or relief are *less* because in admiralty, than at law, simply because of the nomenclature with which the artificiality of the common law may chance to label them.

That admiralty could not relieve in a cause in which it has jurisdiction, where a common law court could if the action were brought in it, is an absurdity. The foundation for the relief is necessarily the contract from which stems all obligations. Whether petitioners were prospective passengers of a common carrier, by sea, rail, bus or air, does not lessen the remedies or relief to which they are entitled because they are matters of substantive law surrounding all contracts of transportation.

Before the Constitutional grant to our Federal courts of judicial power extending to all cases of admiralty and maritime jurisdiction, affreightment contracts and causes thereon were not within the jurisdiction of the English or colonial admiralty courts and suits thereon were relegated to the common law courts. It is inconceivable and contrary to plain common sense that our founding fathers, so anxious to throw off the English yoke of tyranny and the ridiculous jurisdictional situation existing in the English and colonial courts, intended to lessen the remedies and relief to which their countrymen were entitled for breaches of transportation contracts, simply because they were of a maritime nature over which they had expressly conferred jurisdiction in our Federal courts.